

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 57-020-15-1-4-01474-16
Petitioner: MHY LLC – Mariam Mohamed
Respondent: Noble County Assessor
Parcel No.: 57-07-33-320-216.000-020
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Petitioner initiated its appeal with the Noble County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130 dated October 12, 2015. On June 3, 2016, the PTABOA issued its Notification of Final Assessment Determination. Petitioner then timely filed a Form 131 petition on July 11, 2016, with the Board.
2. Petitioner elected to have its appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On January 31, 2017, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath:
 - Yasser Ahmed, manager for MHY LLC,
 - Anwar Yaffai, manager for MHY LLC,
 - Kim Carson, Noble County Assessor,
 - Gavin Fisher, Assessor’s witness.

Facts

5. The property under appeal is a service station and convenience mart located at 327 South Main Street in Kendallville.
6. The PTABOA determined the following values:

Land: \$10,700 Improvements: \$199,100 Total: \$209,800.

7. Petitioner requested the following assessment:

Land: \$8,000 Improvements: \$150,000 Total: \$158,000.

Record

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:¹

Petitioner's Exhibits attached to Board Exhibit A:

Petitioner Exhibit:	Seven photographs of the subject property,
Petitioner Exhibit:	Property record card ("PRC") of the subject property,
Petitioner Exhibit:	Petitioner's grounds for appeal,
Petitioner Exhibit:	Inspection notes and photographs of the subject property prepared F. J. Nester of Nester Construction, PRC and three photographs of Walter-Dimmick Petroleum (i.e. Shell station),
Petitioner Exhibit:	PRC and four photographs of Indiana Investment Realty LLC (i.e. BP station),
Petitioner Exhibit:	PRC and two photographs of Speedway LLC (i.e. Speedway station),
Petitioner Exhibit:	2013, 2014, and 2015 federal income tax returns,
Petitioner Exhibit 1:	Email correspondence between C. Shane Rasler of Silveus Insurance Partners and Yasser Ahmed, dated June 3, 2016,
Respondent Exhibit 1:	List of service station with convenience mart sales,
Board Exhibit A:	Form 131 petition and attachments,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Objection

9. Petitioner objected to Respondent's Exhibit 1, arguing that the information contained within the exhibit is inaccurate. Petitioner's objection goes to the weight of the evidence

¹ Petitioner requested that its exhibits attached to its Form 131 petition be submitted into evidence at the Board's hearing.

rather than its admissibility. Thus, the Board overrules Petitioner's objection and Respondent's Exhibit 1 is admitted.

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value increased from \$162,500 in 2014 to \$209,800 in 2015, which is an increase in excess of five percent. Consequently, Respondent has the burden of proving the 2015 assessment is correct. To the extent Petitioner seeks an assessment below the previous year's level, however, it bears the burden of proving that lower value.

Summary of the Parties' Contentions

15. Respondent's case:
 - a. Gavin Fisher, an Indiana licensed appraiser, analyzed six purportedly comparable properties. The properties sold between April 2, 2009, and May 10, 2012. The

sale prices ranged from \$133 per square foot to \$262 per square foot, with an average of \$211 per square foot. Because the subject property is assessed at \$104 per square foot, and because he believes Petitioner's deferred maintenance and overall condition issues are reflected in that value, Fisher concluded that it is not overvalued. He also pointed out that the subject property's current assessed value is less than what Petitioner paid for the property ten years ago. *Fisher testimony; Resp't Ex. 1.*

16. Petitioner's case:

- a. Petitioner claims the subject property is in poor condition. Specifically, the service station and convenience mart are old and in need of extensive repairs. There are no counters in the store, parking is inadequate, and there are only two gas pumps. Also, the underground tanks are steel and suffer from contamination. They require annual maintenance and testing every five years, which costs approximately \$8,000. Because the tanks are not up to date, Petitioner has to carry a pollution insurance policy to meet state requirements. Petitioner argues that because of these conditions combined with low sales, he cannot obtain a loan to make repairs nor can he sell the property. *Ahmed testimony; Pet'r Ex. 1, Board Exhibit A.*
- b. Petitioner also criticized Respondent's comparative market analysis. He claims that the purportedly comparable properties are not located in Kendallville. Petitioner argues that the subject property should be compared to other service stations with convenience marts in the immediate surrounding area. *Ahmed & Yaffai testimony.*

Analysis

17. Respondent failed to provide sufficient evidence to establish a prima facie case that the 2015 assessed value was correct. The Board reached this decision for the following reasons:

- a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties,

and any other information compiled according to generally recognized appraisal practices. See *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); see also Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

- b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Respondent offered a sales-comparison analysis of six of service stations with convenience marts to support the assessment.² To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* In this case, the analysis was based on an average price per square foot. However, Respondent did not attempt to account for any relevant differences among the properties. Consequently, the analysis has little or no probative value.
- d. Thus, Respondent failed to establish a prima facie case that the 2015 assessed value was correct. Because she failed to meet her burden of proof, the 2015 assessment must be reduced to the previous year's level of \$162,500. That, however, does not end the Board's inquiry because Petitioner requested an assessed value of \$158,000. As explained above, Petitioner has the burden of proving that it is entitled to an additional reduction. The Board therefore turns to Petitioner's evidence.
- e. The photographs of the property offered by Petitioner indicate that the convenience mart is in poor condition. However, merely showing a property is in need of repair or poor condition is not enough to establish that the assessment is in error. Petitioner did not offer probative evidence to establish how the deferred maintenance affected the property's value on the valuation date. Without more, Petitioner's photographs and testimony are not enough to make a prima facie case for further reducing the property's assessment below the 2014 amount.

² Although Mr. Fisher is a licensed appraiser, he did not present a USPAP compliant appraisal.

Conclusion

18. Respondent failed to make a prima facie case that the 2015 assessment was correct. Petitioner failed to make a prima facie case for an amount lower than the 2014 value. Therefore, the 2015 assessment must be reduced to the 2014 assessed value of \$162,500.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2015 assessed value must be changed.

ISSUED: April 3, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>